

In the Matter of)
) WC Docket No. 07-52
Broadband Industry Practices)

COMMENTS OF NBC UNIVERSAL, INC.

As it considers the arguments proffered by parties on all sides of the network management debate, the Commission must be guided by two key facts. First, at least 50% of broadband capacity is taken up by a small minority of users (about 5%) using peer-to-peer networks to traffic in pirated music, video and software.

1 Petition for Declaratory Ruling filed by Free Press, et al. (Nov. 1, 2007); Petition for Rulemaking to
 Establish Rules Governing Network Management Practices by Broadband Network Operators, filed by
 Vuze, Inc. (Nov. 14, 2007).

capable backbone facilities and costs the U.S. economy billions of dollars and hundreds of thousands of lost jobs.

Recent studies from third-party researchers have demonstrated the scope and scale of the problem worldwide:

- In 2005 CacheLogic, a tech company that provides traffic management services to ISPs in Europe, the U.S. and Asia, published "P2P in 2005" and presented its figures to the Federal Trade Commission in December of that year. It reported that "P2P represented 60% of internet traffic at the end of 2004" and "is still growing."²
- Another paper prepared by the company PeerApp, which specializes in peer-to-peer infrastructure, found similar volumes of P2P traffic: "the figure today may be as high as 60% of all internet traffic."³
- A third study conducted by the tech company Sandvine came to similar conclusions: "In Europe, where broadband adoption has steadily outpaced the United States, upstream [P2P] traffic represents up to eighty-five percent (85%) of all bandwidth consumed on broadband provider networks. Downstream P2P traffic represents about sixty percent (60%) of all bandwidth consumed. In contrast, file sharing in the UK and North America consumes about forty-eight (48%) of total downstream bandwidth and seventy-six percent (76%) of upstream traffic."⁴
- Time Warner Cable, the second-largest cable ISP in the U.S., recently publicly announced that it plans to test a new rate plan to address the problem of P2P consumption of network capacity.⁵ According to Time Warner Cable spokesman Alexander Dudley, "a small group of super-heavy users of downloads, around 5% of the customer base, account for up to 50% of network capacity."⁶ Mr. Dudley emphasized that "This is not targeted at

² CacheLogic, "P2P in 2005," http://www.cachelogic.com/home/pages/studies/2005_01.php.

³ PeerApp White Paper, "Comparing P2P Solutions," available at <http://peerapp.com/solutions-managing-transit-link-growth.aspx>.

⁴ Discussed in Protecting Copyright and Innovation in a Post-Grokster World: Hearings Before the Senate Judiciary Comm., 109th Cong. (Sept. 28, 2005) (statement of Sam Yagan, president of parent company of P2P application eDonkey), available at http://judiciary.senate.gov/testimony.cfm?id=1624&wit_id=4689.

⁵ See "Time Warner Links Web Prices With Usage," (Jan. 17, 2008), available at http://biz.yahoo.com/ap/080117/time_warner_cable_internet.html.

⁶ *Id.*

people who download movies from Apple. This is aimed at people who use peer-to-peer networks and download terabytes.”⁷

The second key point for the Commission is that other governments around the world, including France, the United Kingdom, Australia, Singapore, Sweden and Belgium, have recognized the massive scale of online copyright infringement (and the harm it causes to their economies), as well as the vital role that ISPs can play in helping to curb copyright abuse through voluntary cooperation with content industries. In November 2007, French President Nicolas Sarkozy announced a new agreement, developed in cooperation with ISPs and the recording industry, under which ISPs in France will commit to disconnect persistent copyright infringers on their networks. President Sarkozy stated that such action was necessary because “[t]he Internet must not become a high-tech Wild West, a lawless zone where outlaws can pillage works with abandon or, worse, trade in them in total impunity.”⁸ Next week, the U.K. government plans to publish a paper in which it will encourage the voluntary efforts of ISPs to reduce the massive scale of online trafficking in stolen music, video content and software.⁹

⁷ See BITS, New York Times (Jan. 21, 2008), available at <http://query.nytimes.com/gst/fullpage.html?res=9B0DEED7123CF932A15752C0A96E9C8B63&sec=&sp on=&pagewanted=2>; see also *Metro-Goldwyn-Mayer Studios, Inc., et al. v. Grokster, Ltd.*, CV 01-08541, Order Granting Plaintiffs’ Motion for Summary Judgment on Liability Against Defendant Streamcast Networks, Inc. (U.S.D.C. Central District of Calif., entered Sept. 27, 2006) (court on remand ruled that plaintiffs’ undisputed facts showed “massive” infringement involving 97% of the content downloaded via defendant’s P2P networks).

⁸ IFPI Digital Music Report 2008, Revolution, Innovation, Responsibility, Section 5, “Time for Governments and ISPs to Take Responsibility,” at 21 (2008), available at http://www.ifpi.org/content/section_resources/dmr2008.html (“IFPI 2008 Report”).

⁹ Francis Elliott, “Internet Users Could Be Banned Over Illegal Downloads,” The Times (Feb. 12, 2008), available at http://technology.timesonline.co.uk/tol/news/tech_and_web/the_web/article3353387.ece; see also IFPI 2008 Report at 21-22 (reporting on developments in Sweden, Belgium, Australia and Singapore).

In this proceeding, the Commission should recognize that sensible network management practices are an essential component of these voluntary efforts, so that ISPs have the tools they need to protect consumers from the adverse effects of staggeringly high bandwidth consumption by P2P networks and to help reduce the vast amount of pirated content that flows through these networks.

Respectfully submitted,

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